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Attorneys for Plaintiff and the Putative Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

Sara Rosas, individually, and on behalf of all)	Case No. _____
others similarly situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) COMPLAINT
vs.)	
) DEMAND FOR JURY TRIAL
Jumio, Inc.)	
)
Defendant.)	
)
)
)

CLASS ACTION COMPLAINT

Now comes Plaintiff, Sara Rosas (“Plaintiff”), on behalf of herself and all others similarly situated, through Counsel, and pursuant to 740 ILCS § 14/15, and Fed. R. Civ. P. 23, against Defendant Jumio, Inc. (“Jumio” or “Defendant”), its subsidiaries and affiliates, to redress and curtail Defendant’s unlawful collections, obtainments, use, storage, and disclosure of Plaintiff’s sensitive

1 and proprietary biometric identifiers and/or biometric information (collectively referred to herein as
2 “biometric data” and/or “biometrics”). Plaintiff alleges as follows upon personal knowledge as to
3 herself, her own acts and experiences and, as to all other matters, upon information and belief
4 including investigation conducted by her attorneys.

5 **NATURE OF THE ACTION**

6 1. Defendant Jumio, Inc. is a Delaware corporation which operates as an information
7 “processor” for Instacart. A “processor” is an entity that processes personal information on behalf
8 of a controller, based upon the controller’s instructions. In this instance, Jumio is an entity that
9 processes personal information on behalf of Instacart, based upon Instacart’s instructions.
10

11 2. Instacart is an online, “app-based” food delivery platform.

12 3. Plaintiff was employed by Instacart as a “Shopper” within the five years immediately
13 preceding the filing of this matter.

14 4. To be a Shopper for Instacart, Plaintiff was required to upload a picture of her face
15 taken on her cell phone to be her profile image to server as her “avatar” as well as a picture of her
16 government issued identification.
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18 5. Instacart then requires Plaintiff and all its Shoppers to take verification photos on
19 their cell phones at regular intervals when they are working through the Instacart app.

20 6. Instacart utilizes the services of Jumio, who then performs a facial geometry
21 analysis of Plaintiff’s and its Shoppers’ verification photos, avatars, and government issued
22 identification to verify the identity of Plaintiff and its Shoppers.
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24 7. Jumio, acting as a processor for Instacart, collects, stores, possesses, otherwise
25 obtains, uses, and disseminates its users' biometric data to, amongst other things, further enhance
26 Instacart and its online platform.
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1 8. Facial geometry scans are unique, permanent biometric identifiers associated with
2 each user that cannot be changed or replaced if stolen or compromised. Jumio’s unlawful collection,
3 obtainment, storage, and use of its users' biometric data exposes them to serious and irreversible
4 privacy risks. For example, if Jumio’s database containing facial geometry scans or other sensitive,
5 proprietary biometric data is hacked, breached, or otherwise exposed, Jumio users have no means
6 by which to prevent identity theft, unauthorized tracking, or other unlawful or improper use of this
7 highly personal and private information.

8
9 9. The Illinois Legislature enacted BIPA to protect residents' privacy interests in their
10 biometric data. *See Heard v. Becton, Dickinson & Co.*, 440 F. Supp. 3d 960, 963 (N.D. Ill. 2020),
11 citing *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, 432 Ill. Dec. 654, 129 N.E.3d 1197,
12 1199 (2019).

13 10. Courts analogize an individual's privacy interest in their unique biometric data to
14 their interest in protecting their private domain from invasion, such as from trespass. *See Bryant v.*
15 *Compass Group USA, Inc.*, 958 F.3d 617, 624 (7th Cir. 2020), as amended on denial of reh'g and
16 reh'g *en banc*, (June 30, 2020) and opinion amended on denial of reh'g *en banc*, 2020 U.S. App.
17 LEXIS 20468, 2020 WL 6534581 (7th Cir. 2020).

18
19 11. In recognition of these concerns over the security of individuals’ biometrics –
20 particularly in the City of Chicago, which has been selected by major national corporations as a
21 “pilot testing site[] for new applications of biometric-facilitated financial transactions, including
22 finger-scan technologies at grocery stores, gas stations, and school cafeterias” (740 ILCS 14/5(b))
23 – the Illinois Legislature enacted the BIPA, which provides, *inter alia*, that a private entity like
24 Jumio may not obtain and/or possess an individual’s biometrics unless it: (1) informs that person in
25 writing that biometric identifiers or information will be collected or stored; (2) informs that person
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1 in writing of the specific purpose and length of term for which such biometric identifiers or biometric
 2 information is being collected, stored and used; (3) receives a written release from the person for
 3 the collection of his or her biometric identifiers or information; and (4) publishes publicly-available
 4 written retention schedules and guidelines for permanently destroying biometric identifiers and
 5 biometric information. 740 ILCS 14/15(a)-(b).

6 12. The Illinois Legislature has found that “[b]iometrics are unlike other unique
 7 identifiers that are used to access finances or other sensitive information.” 740 ILCS 14/5(c). “For
 8 example, social security numbers, when compromised, can be changed. Biometrics, however, are
 9 biologically unique to the individual; therefore, once compromised, the individual has no recourse,
 10 is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated
 11 transactions.” *Id.*

12 13. Specifically, upon information and belief, Jumio has created, collected, and stored
 14 thousands of “face templates” – highly detailed geometric maps of the face from countless Illinois
 15 residents whose selfies and state-issued ID’s were collected by Jumio. Each face template that Jumio
 16 extracts is unique to a particular individual in the same way that a fingerprint or voiceprint uniquely
 17 identifies a particular individual.

18 14. Jumio is a “private entity” as that term is broadly defined by BIPA and Jumio is
 19 subject to all requirements of BIPA. *See* 740 ILCS § 14/10.

20 **JURISDICTION AND VENUE**

21 15. This is a Class Action Complaint for violations of the Illinois Biometric Information
 22 Privacy Act (740 ILCS 14/1, *et seq.*) brought pursuant to Fed. R. Civ. P. 23, seeking statutory and
 23 actual damages.

24 16. Venue is proper in this Court because a substantial amount of the acts and omissions
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1 giving rise to this Action occurred within this judicial district.

2 17. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because
3 Plaintiff and the proposed class members are all residents of Illinois, Jumio is domiciled within this
4 judicial district, and the amount in controversy exceeds \$75,000.

5 18. This Court has jurisdiction over this dispute pursuant to the Class Action Fairness
6 Act (“CAFA”) because the prospective class includes over 100 people and the amount in
7 controversy exceeds \$5,000,000.

8 19. At all relevant times, Plaintiff and the proposed Class are residents of the state of
9 Illinois and the violations of BIPA as detailed herein occurred while Plaintiff and the proposed Class
10 were located in Illinois.

11 20. At all relevant times, Jumio is incorporated under the laws and jurisdiction of
12 Delaware, and Jumio’s principal place of business is located at Sunnyvale, California.

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14 **DIVISIONAL ASSIGNMENT**

15 21. The San Jose is the appropriate division for this
16 case, pursuant to Civil L.R. 3-2(c), because a substantial part of the events or omissions giving rise
17 to the claims alleged in this Complaint occurred in the County of Santa Clara and Jumio is
18 headquartered in the City of Sunnyvale, California.

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20 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

21 22. Plaintiff realleges and incorporates by reference all allegations in all preceding
22 paragraphs.

23 23. Plaintiff was employed by Instacart as a “Shopper” within the five years
24 immediately preceding the filing of this matter.

25 24. To be a Shopper for Instacart, Plaintiff was required to upload a picture of her
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1 face taken on her cell phone to be her profile image to serve as her “avatar” as well as a picture of
2 her government issued identification.

3 25. Instacart utilizes the services of Jumio, who then performs a facial geometry
4 analysis of Plaintiff’s and its Shoppers’ verification photos, avatars, and government issued
5 identification to verify the identity of Plaintiff and its Shoppers.

6 26. In other words, Jumio, as a processor for Instacart, collected and retained
7 biometric information for the purpose of verifying Plaintiff’s identity prior to opening an Instacart
8 Shopper account in Plaintiff’s name.

9 27. Jumio, as a processor for Instacart, again collected and retained biometric
10 information for the purpose of verifying Plaintiff’s identity at regular intervals while Plaintiff
11 worked at Instacart as a Shopper.

12 28. Ostensibly, the purpose of Instacart’s collection of Plaintiff’s facial geometry was
13 to verify Plaintiff’s identity prior to Plaintiff’s logging on to the app to work as a Shopper for
14 Instacart at any given time.

15 29. As such, Plaintiff’s verification photos should have been permanently destroyed by
16 the processor Jumio immediately following each verification of Plaintiff’s identity.

17 30. However, Jumio failed to permanently destroy Plaintiff’s facial geometry as required
18 by law.

19 31. As such, Jumio’s retention of Plaintiff’s biometric information was unlawful and in
20 violation of 740 ILCS § 14/15(a).

21 32. Neither Instacart nor Jumio informed Plaintiff in writing that Jumio was collecting
22 or storing her biometric information.

23 33. Instead, Instacart simply instructed Plaintiff to upload her state issued identification
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1 form, avatar photograph, and periodic verification photos as part of the onboarding and day-to-day
2 job duties while working as Shopper for Instacart.

3 34. In fact, neither Instacart nor Jumio made any mention of biometric information,
4 collection of biometric information, or storage of biometric information.

5 35. Moreover, neither Instacart nor Jumio informed Plaintiff in writing of the specific
6 purpose and length of term for which her biometric information was being collected, stored, and
7 used.

8 36. Jumio collected, stored, and used Plaintiff's biometric information without ever
9 receiving a written release executed by Plaintiff which would provide informed consent to or
10 authorize Jumio to do same.

11 37. At all relevant times, Jumio had no written policy, made available to the public,
12 establishing a retention schedule and guidelines for permanently destroying biometric information
13 when the initial purpose for collecting or obtaining such biometric information has been satisfied
14 or within 3 years of the individual's last interaction with Jumio, whichever occurred first.

15 38. Additionally, Jumio disclosed, redisclosed, or otherwise disseminated Plaintiff's
16 biometric information: (1) without Plaintiff's consent; (2) without Plaintiff's authorization to
17 complete a financial transaction requested or authorized by Plaintiff; (3) without being required by
18 State or federal law or municipal ordinance; or (4) without being required pursuant to a valid warrant
19 or subpoena issued by a court of competent jurisdiction.

20 39. Upon information and belief, Jumio is part of numerous third parties, all of whom
21 have had Plaintiff's biometric information disclosed, redisclosed or otherwise disseminated to them
22 via their role as a processor for Instacart.

23 40. Jumio's collection and retention of biometric information as described herein is not
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unique to Plaintiff and is instead part of Jumio's policies and procedures which Jumio applies to all its Shoppers, including the Class Members.

RULE 23 CLASS DEFINITION AND ALLEGATIONS

41. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

42. Plaintiff brings Claims for Relief in violation of BIPA as a class action under Rule 23(a), (b)(2) and (b)(3). Plaintiff brings these claims on behalf of herself and all members of the following Rule 23 Class:

All Illinois residents who had their biometric information collected by Jumio while using the platform Instacart at any point in the five (5) years preceding the filing of this Complaint (the "Class Members").

43. In the alternative, and for the convenience of this Court and the parties, Plaintiff may seek to certify other subclasses at the time the motion for class certification is filed.

44. **Numerosity (Rule 23(a)(1)).** The Class Members are so numerous that joinder of all members is impracticable. Plaintiff is informed and believes that there are more than 1,000 people who satisfy the definition of the Class.

45. **Existence of Common Questions of Law and Fact (Rule 23(a)(2)).** Common questions of law and fact exist as to Plaintiff and the Class Members including, but not limited to, the following:

a. Whether Jumio possessed Plaintiff's and the Class Members' biometric identifiers or biometric information without first developing a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with Jumio,

1 whichever occurs first.

2 b. Whether Jumio collected, captured, purchased, received through trade, or otherwise
 3 obtained Plaintiff's and the Class Members' biometric identifiers or biometric information, without
 4 first: (1) informing Plaintiff and the Class Members in writing that a biometric identifier or biometric
 5 information is being collected or stored; (2) informing Plaintiff and the Class Members in writing
 6 of the specific purpose and length of term for which their biometric identifiers or biometric
 7 information was being collected, stored, and used; and (3) receiving a written release executed by
 8 Plaintiff and the Class Members
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10 c. Whether Jumio disclosed, redisclosed, or otherwise disseminated Plaintiff's and the
 11 Class Members' biometric identifiers or biometric information: (1) without Plaintiff's and the Class
 12 Members' consent; (2) without Plaintiff's and the Class Members' authorization to complete a
 13 financial transaction requested or authorized by Plaintiff and the Class Members; (3) without being
 14 required by State or federal law or municipal ordinance; or (4) without being required pursuant to a
 15 valid warrant or subpoena issued by a court of competent jurisdiction.
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17 d. The damages sustained and the proper monetary amounts recoverable by Plaintiff
 18 and the Class Members.

19 46. **Typicality (Rule 23(a)(3)).** Plaintiff's claims are typical of the Class Members'
 20 claims. Plaintiff, like the Class Members, had their biometric identifiers and biometric information
 21 collected, retained or otherwise possessed by Jumio without its adherence to the requirements of
 22 BIPA as detailed herein.
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24 47. **Adequacy (Rule 23(a)(4)).** Plaintiff will fairly and adequately represent and protect
 25 the interests of the Class Members. Plaintiff has retained counsel competent and experienced in
 26 complex class actions.
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1 48. **Injunctive and Declaratory Relief (Rule 23(b)(2)).** Class certification of the Rule
 2 23 claims is appropriate under Rule 23(b)(2) because Jumio acted or refused to act on grounds
 3 generally applicable to the Class Members, making appropriate declaratory relief with respect to the
 4 Class Members as a whole.

5 49. **Predominance and Superiority of Class Action (Rule 23(b)(3)).** Class
 6 certification of the Rule 23 claims is also appropriate under Rule 23(b)(3) because questions of law
 7 and fact common to the Class Members predominate over questions affecting only individual
 8 members of the classes, and because a class action is superior to other available methods for the fair
 9 and efficient adjudication of this litigation. Jumio's common and uniform policies and practices
 10 illegally deprived Plaintiff and the Class Members of the privacy protections which BIPA seeks to
 11 ensure; thus, making the question of liability and damages much more manageable and efficient to
 12 resolve in a class action, compared to hundreds of individual trials. The damages suffered by
 13 individual Class Members are small compared to the expense and burden of individual prosecution.
 14 In addition, class certification is superior because it will obviate the need for unduly duplicative
 15 litigation that might result in inconsistent judgments about Jumio's practices.

16 50. Plaintiff intends to send notice to all Class Members to the extent required by Fed.
 17 R. Civ. P. 23.

18 **COUNT ONE: VIOLATION OF 740 ILCS § 14/15(a)**

19 51. Plaintiff realleges and incorporates by reference all allegations in all preceding
 20 paragraphs.

21 52. A private entity in possession of biometric identifiers or biometric information must
 22 develop a written policy, made available to the public, establishing a retention schedule and
 23 guidelines for permanently destroying biometric identifiers and biometric information when the
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1 initial purpose for collecting or obtaining such identifiers or information has been satisfied or within
2 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a
3 valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession
4 of biometric identifiers or biometric information must comply with its established retention schedule
5 and destruction guidelines. 740 ILCS § 14/15(a).

6 53. Jumio created and collected biometric templates of the Plaintiff's and the Class
7 Members' faces which qualifies as biometric information as defined by BIPA.

8 54. At all relevant times, Jumio had no written policy, made available to the public,
9 establishing a retention schedule and guidelines for permanently destroying biometric information
10 when the initial purpose for collecting or obtaining such biometric information has been satisfied or
11 within 3 years of the individual's last interaction with Jumio, whichever occurs first.

12 55. Ostensibly, the purpose of Jumio's collection of Plaintiff's and the Class Members'
13 facial geometry was to verify Plaintiff's and the Class Members' identities prior to opening an
14 Instacart Shopper account in their names and the purpose of Jumio's collection Plaintiff's and the
15 Class Members' biometric information was to verify Plaintiff's and the Class Members' identities
16 when they logged in to Instacart.

17 56. As such, Plaintiff's and the Class Members' facial geometry should have been
18 permanently destroyed by Jumio following the opening of their Instacart Shopper accounts.

19 57. However, Jumio failed to permanently destroy Plaintiff's and the Class Members'
20 facial geometries following the opening of their Instacart Shopper accounts and instead retained
21 Plaintiff's and the Class Members' biometric information.

22 58. Moreover, Plaintiff's and the Class Members' biometric information should have
23 been permanently destroyed by Jumio after Plaintiff and the Class Members logged out or ceased
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using their Instacart Shopper account.

59. However, Jumio failed to permanently destroy Plaintiff's and the Class Members' biometric information after they logged out or ceased using their Instacart Shopper accounts.

60. As such, Jumio's retention of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(a).

COUNT TWO: VIOLATION OF 740 ILCS § 14/15(b)

61. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

62. No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

(1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and

(3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative. 740 ILCS § 14/15(b).

63. Jumio did not inform Plaintiff and the Class Members in writing that Jumio was collecting or storing their biometric information.

64. Instead, Plaintiff and the Class Members were simply instructed to upload their state issued identification forms and "selfies" as part of the overall account opening process and this information was then processed by Jumio by creating biometric facial templates.

65. Moreover, Jumio did not inform Plaintiff and the Class Members in writing of the specific purpose and length of term for which their biometric information was being collected, stored, and used.

67. Jumio collected, stored, and used Plaintiff's and the Class Members' biometric information without ever receiving a written release executed by Plaintiff and the Class Members which would consent to or authorize Jumio to do the same.

68. As such, Jumio's collection of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(b).

COUNT THREE: VIOLATION OF 740 ILCS § 14/15(d)

69. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

70. No private entity in possession of a biometric identifier or biometric information may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or biometric information unless:

(1) the subject of the biometric identifier or biometric information or the subject's legally authorized representative consents to the disclosure or redisclosure;

(2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or the biometric information or the subject's legally authorized representative;

(3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or

(4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction. 740 ILCS § 14/15(d).

71. Upon information and belief, Jumio is part of a network of numerous third parties, all of which have had Plaintiff's biometric information disclosed, redisclosed or otherwise disseminated to them via their role as processors for Instacart.

72. Jumio's disclosures, redisclosures, or otherwise disseminating of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(d).

WHEREFORE, individually, and on behalf of the Class Members, Plaintiff prays for: (1)

certification of this case as a class action pursuant to Fed. R. Civ. P. 23 and appointing the undersigned counsel as class counsel; (2) a declaration that Defendant has violated BIPA, 740 ILCS 14/1 *et seq.*; (3) statutory damages of \$5,000.00 for the intentional and reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 per violation pursuant to 740 ILCS 14/20(1) in the event the court finds that Defendant's violations of BIPA were not willful; (4) reasonable attorneys' fees and costs and other litigation expense pursuant to 740 ILCS 14/20(3); (5) actual damages; and (6) for any other relief deemed appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members hereby demand a jury trial on all causes of action and claims with respect to which they each have a state and/or federal constitutional right to a jury trial.

Dated: March 5, 2024 Respectfully submitted,

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